IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

Crl.MC.No. 2364 of 2007()

CP.23/2006 of J.F.C.M. COURT-I, PERINTHALMANNA PENDING AS LP 25/07

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PETITIONER: ACCUSED NO.3

MOIDUNNI, S/O SAID HAJI,
KOORITHODI HOUSE, KURUVAMBALAM AMSOM,
PERINTHALMANNA.

BY ADV. SRI.MANSOOR.B.H.

RESPONDENTS: COMPLAINANT

SUB INSPECTOR OF POLICE,
KOLATHUR POLICE STATION, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2364 of 2007

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Dated this the 24th day of July, 2007

O R D E R

The petitioner is the third accused in Crime No. 194 of 2002 of Kolathur Police Station registered, inter alia, under Section 308 r/w. 149 I.P.C. At the crime stage the petitioner was enlarged on bail, it is submitted. Final report was filed. Cognizance was taken. But the petitioner was not available for committal. The co-accused, who were available, were committed and they stood trial before the Sessions Court. The Sessions Court found the co-accused, who stood trial to be not guilty and acquitted them.

2. The petitioner has now come before this Court to invoke the powers under Section 482 Cr.P.C. to quash the proceedings against the petitioner in as much as the co-accused have already been acquitted.

3. The dictum in **Moosa** v. **S.I. of Police** (2006 (1) KLT 552) stares at the petitioner. It is now trite that the mere fact that the co-accused have been found not guilty and acquitted on the basis of the evidence in the trial held against them is no reason for an absconding co-accused to claim any benefit or advantage therefrom.

More over, a perusal of the judgment shows that in that case against the co-accused the victim could not be examined. Of course, there is a statement that the father of the victim came before the court and said that the victim has no grievance at all. The advantage or benefit of the non-examination of the victim cannot certainly be claimed by the absconding co-accused. In these circumstances it is evident that following the dictum in **Moosa**, the petitioner will have to stand trial.

4. The learned counsel for the petitioner however submits that the petitioner is now willing to surrender before the learned Magistrate and claim regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously.

5. I find no reason to invoke the jurisdiction under Section 482 Cr.P.C. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and

expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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